

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

THOMAS G. KEZAR AND SYLVIA,  
SHROYER KEZAR  
Plaintiffs,

v.

STATE FARM LLOYDS,  
Defendant.

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CIVIL ACTION NO. 1:17-cv-389  
**JURY**

**DEFENDANT STATE FARM LLOYDS' NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that Defendant STATE FARM LLOYDS ("Defendant SFL") files this Notice of Removal pursuant to 28 U.S.C. § 1446(a), and would show as follows:

**I. PROCEDURAL BACKGROUND**

PLEASE TAKE NOTICE that Defendant STATE FARM LLOYDS ("Defendant SFL") files this Notice of Removal pursuant to 28 U.S.C. § 1446(a), and would show as follows:

**II. PROCEDURAL BACKGROUND**

1. On or about March 20, 2017, Plaintiffs Thomas G. Kezar and Sylvia Shroyer Kezar (hereinafter "Plaintiffs") filed their Original Petition ("the Petition") in Cause No. 17-0576 in the 22<sup>nd</sup> Judicial District Court of Hays County, Texas, initiating a civil cause of action against Defendant. See Exhibit C. Plaintiffs' Original Petition was filed against State Farm Lloyds, Inc. and State Farm Lloyds of Texas. *Id.* Plaintiffs amended their Petition on April 12, 2017 to remove State Farm Lloyds, Inc. and State Farm Lloyds of Texas with and replaced them with the proper defendant, State Farm Lloyds. See Exhibit E.

2. Plaintiffs specifically allege common law fraud, negligence, breach of contract, violations of the duty of good faith and fair dealing and unfair claim settlement practices arising from the handling of a property damage claim. Plaintiffs further allege that Defendant's conduct

was committed knowingly, willfully, and intentionally. They seek both compensatory and exemplary damages.

3. Defendant SFL received Plaintiffs' First Amended Petition via electronic delivery on April 12, 2017. See Exhibit E. Defendant filed its Original Answer on April 14, 2017. See Exhibit F.

4. Defendant SFL files the instant Notice of Removal based on the grounds asserted herein because diversity exists between the proper parties and the amount in controversy allegedly exceeds \$75,000. Promptly after filing this Notice of Removal, Defendant SFL is also filing a Notice of Removal of Civil Action with the State Court in which this case was previously pending.

### **III. GROUNDS FOR REMOVAL**

5. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(a) because the proper parties to this suit are citizens of different states, and the matter in controversy allegedly exceeds \$75,000.00, exclusive of interest and costs.

6. According to Plaintiffs' First Amended Original Petition, at the time this action was commenced, Plaintiffs were, and still are, residents of Dripping Springs, Hays County, Texas. The Fifth Circuit has stated that "the place of residence is prima facie the domicile." See *Stine v. Moore*, 213 F.2d 446, 448 (5th Cir. 1954). Additionally, "[f]or purposes of federal diversity jurisdiction 'citizenship' and 'domicile' are synonymous." See *Hendry v. Masonite Corp.*, 455 F.2d 955, 955 (5th Cir. 1972); *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564 (5th Cir. 2011). Furthermore, once established, "[a] person's state of domicile presumptively continues unless rebutted with sufficient evidence of change." *Id.* Thus, for purposes of diversity of citizenship, Plaintiffs are considered Texas citizens.

7. Defendant SFL was, at the time this action was commenced, and still is a citizen of a state other than Texas. Defendant SFL is a "Lloyds Plan" organized under Chapter 941 of the Texas

Insurance Code. See Exhibit G. It consists of an unincorporated association of underwriters who were at the time this action was commenced, and still are, all citizens of a state other than Texas for diversity purposes. See *Royal Ins. Co. of Am. V. Quinn-L Capital Corp.*, 3 F.3d 877, 882-83 (5th Cir. 1993) (citizenship of unincorporated association determined by citizenship of members). Therefore, complete diversity of citizenship exists between Plaintiffs and Defendant SFL.

8. Plaintiffs have expressly alleged damages in excess of \$200,000 by virtue of the damages alleged in their First Amended Original Petition, satisfying the “amount in controversy” requirement of 28 U.S.C. § 1332(a). To determine the amount in controversy, in addition to policy limits and potential attorneys’ fees, items to be considered in ascertaining the amount in controversy when the insurer could be liable for those sums under state law are *inter alia* penalties, statutory damages, and punitive damages—not just interest or costs. See *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see also Foret v. Southern Farm Bureau Life Ins. Co.*, 918 F.2d 534, 536 (5th Cir.1990) (“[A]ttorney’s fees may be included in determining the jurisdictional amount.”); *Allstate Ins. Co. v. Hilbun*, 692 F. Supp. 698, 700 (S.D. Miss.1988) (“Punitive damages can be included to reach the amount in controversy requirement if, under the governing law of the suit, they are recoverable.”) (*citing Bell v. Preferred Life Assurance Soc’y*, 320 U.S. 238, 64 S.Ct. 5, 88 L.Ed. 15 (1943)). Taking into account the damages pled by Plaintiffs in their First Amended Original Petition, which affirmatively states “Plaintiffs seek . . . monetary relief over \$200,000 but not more than \$2,000,000,”<sup>1</sup> the amount in controversy for Plaintiff’s claims exceeds the jurisdictional \$75,000.00 amount. Therefore, this action may be removed by Defendant SFL pursuant to 28 U.S.C. § 1441(b).

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<sup>1</sup> See Plaintiffs’ First Amended Original Petition, at ¶8.a.

#### **IV. VENUE**

9. Venue for removal is proper in this district and division under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action was pending, Texas State District Courts of Hays County, Texas, and a substantial part of the events giving rise to Plaintiffs' claims allegedly occurred in that district.

#### **V. PROCEDURAL REQUIREMENTS**

10. Pursuant to 28 U.S.C. § 1446(a), the following exhibits are attached and indexed:

<b>EXHIBIT</b>	<b>DESCRIPTION</b>
<b>A.</b>	Index of Matters Being Filed
<b>B.</b>	Case Summary in the state court action
<b>C.</b>	Plaintiffs' Original Petition filed in the 22 <sup>nd</sup> District Court of Hays County, Texas on March 20, 2017
<b>D.</b>	Citation to State Farm Lloyds, Inc. issued by the District Clerk of Hays County, Texas on March 21, 2017
<b>E.</b>	Plaintiffs' First Amended Original Petition filed in the 22 <sup>nd</sup> District Court of Hays County, Texas on April 12, 2017
<b>F.</b>	Defendant State Farm Lloyds Original Answer filed in the 22 <sup>nd</sup> District Court of Hays County, Texas on April 14, 2017
<b>G.</b>	Affidavit of Jim Larson
<b>H.</b>	List of Counsel of Record

11. This Notice of Removal is being filed by Defendant SFL within thirty (30) days of receipt of Plaintiffs' First Amended Original Petition and is thus, timely.

12. Pursuant to 28 U.S.C. § 1446(a), all pleadings, process, orders and all other filings in the state court action are attached to this Notice.

13. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice of Removal will be given to all adverse parties promptly after the filing of same.

14. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of the Notice of Removal will be filed with the District Clerk for the 22<sup>nd</sup> Judicial District of Hays County, Texas promptly after filing of same.

## **VI. CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Defendant STATE FARM LLOYDS respectfully requests that the above-captioned action now pending in the 22<sup>nd</sup> Judicial District Court of Hays County, Texas be removed to the United States District Court for the Western District of Texas, Austin Division.

Respectfully Submitted,

/s/ Michael Klein

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**ATTORNEYS FOR DEFENDANT**

**STATE FARM LLOYDS**

**CERTIFICATE OF SERVICE**

This is to certify that on April 27, 2017, I caused to be electronically filed the foregoing Notice with the Clerk of the Court using the CM/ECF system and a true and correct copy was served on counsel for Plaintiff, as listed below and in the manner indicated:

***Via Electronic Filing Service and  
Via Facsimile (503)334-4367***

Randall Robinson

Randall Robinson Law Firm, Inc.

500 E. Wallace, Suite 203

San Saba, TX 76877

*Attorney for Plaintiffs*

*/s/ Michael Klein*

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MICHAEL KLEIN